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C O N F I D E N T I A L SECTION 01 OF 04 BOGOTA 001660

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TAGS: [KJUS](#) [PHUM](#) [PTER](#) [PINR](#) [PGOV](#) [CO](#)

SUBJECT: DEMOBILIZATION LAWS: COMPETING DRAFTS IN SPECIAL SESSION

Classified By: Ambassador William B. Wood for reasons
1.4 (b) and (d).

Summary

1. (C) On February 9, the GOC formally presented to Congress its version of a law that would impose alternative sentences on members of illegal armed groups accused of serious crimes who demobilize and comply with specific conditions. A group of Colombian legislators led by Senator Rafael Pardo formally submitted a similar bill on February 3. On February 15, the Colombian Congress began a special session to debate the bills. The GOC and Pardo bills share many identical articles, but miscommunication, political rivalries, and negotiating tactics may have prevented complete consensus. The main difference is in their treatment of "confession." The final text will continue to be modified as the Congressional debate develops. The GOC is still making changes to its bill. President Uribe gave the Peace Commissioner permission to suggest changes to Congress and the Minister of Interior and Justice. Uribe and his legal adviser have expressed confidence that the GOC will reach agreement with Pardo in the next three weeks and that a final version will be approved by June. Seven other drafts have been submitted by other Congressmen, which could influence the final text, especially a version submitted by Representative Armando Benedetti that would not have such vigorous requirements for the beneficiaries. We have emphasized that the final draft should not harm the U.S.-Colombian extradition relationship, should require a five year minimum sentence for paramilitary leaders, and should prevent drug lords from buying into the process. End Summary.

GOC and Pardo Bills Similar

2. (C) The GOC and a group of Congressmen led by Senator Pardo drafted bills that would impose alternative sentences on members of illegal armed groups accused of serious crimes who demobilize and comply with specific conditions. The two groups had been negotiating over the past several weeks and came close to agreeing on a text. However, talks broke down early in the week of January 30. It appears miscommunication and political rivalries played a role. The negotiators may also have been delaying an agreement because there was little incentive for the Pardo group to make concessions to arrive at an agreement prior to the Congressional session. Each side decided to formally present its own draft to Congress. Pardo presented his group's bill -- the "Law for Truth, Justice, and Reparations" -- on February 3, while the GOC presented its "Law for Justice and Peace" on February 9. President Uribe and his legal adviser Camilo Ospina have expressed confidence that they will reach an agreement with the Pardo group within the next three weeks and that a final version will be approved by June. Pardo, however, has said consensus will be difficult after high-level GOC officials publicly criticized his draft.

3. (C) Despite the breakdown in talks, the two versions share many articles. Pardo estimates the GOC draft contains 80 percent of his text. The basic components of both drafts are:

-- Members of illegal armed groups who demobilize and meet specific conditions, including that the organization has released all hostages and was not primarily dedicated to drug trafficking, may be eligible for reduced prison sentences for serious crimes;

-- The GOC gives the Prosecutor General's Office ("Fiscalia") a list of the group's members, including ranks, illicit assets, and crimes they are suspected of committing;

-- Legal proceedings against individuals guilty only of crimes with a maximum sentences of six years or less are suspended if they fulfill specific requirements, including confessing their crimes, surrendering illicit assets, and submitting to a period of supervised probation.

-- Individuals guilty of crimes with penalties of more than six years must serve five to ten years in confinement and fulfill auxiliary punishments, including providing

reparations to victims. They also must confess crimes and surrender illicit assets. After serving their sentence, they must submit to a period of supervised parole. A Tribunal for Truth, Justice, and Reparations imposes the sentence and auxiliary punishments in each individual case.

-- Victims are guaranteed symbolic and material reparations. The Inspector General's Office ("Procurduria") oversees the process to assure that victims' rights are protected.

Confession

14. (C) Pardo has said the main disagreement is over confession. Although both the GOC and Pardo versions require beneficiaries to confess their crimes, they each use different language subject to varying interpretations. Pardo's version states that confessions must be "complete," "trustworthy," and encompass all crimes in which a beneficiary participated. If a beneficiary fails to confess a crime or declare any illicit asset he loses all benefits. The GOC version's language is less specific, requiring a "confession" and stating that a beneficiary who fails to fulfill any of the law's conditions will lose all benefits and be required to serve the full sentence imposed for his crimes.

15. (C) Senator Pardo claims his version is the strictest in enforcing the requirement of confession. He has emphasized that a full confession is key to fully dismantling the United Self-Defense Forces of Colombia (AUC) and other illegal armed groups that may eventually demobilize.

Other Differences

16. (C) Presidential legal adviser Ospina noted other differences between the Pardo and GOC drafts, but said the two sides are nearing consensus. Congressman Luis Fernando Velasco, one of the drafters of the Pardo version, downplayed the differences but acknowledged they are likely to arise during Congressional debate. Congresswoman Gina Parody, another Pardo drafter, echoed his view:

-- Armed Conflict: The Pardo version makes reference to an "armed conflict" when defining victims, combatants, and other elements of the law. The GOC has consistently rejected the use of the term "armed conflict" and is unlikely to accept reference to one in a law. Ospina believes the Pardo group will accept language using "armed groups" instead of conflict.

-- Reparations: Both versions include detailed sections on the rights of victims and required reparations. The Pardo version makes the State responsible for providing mandated reparations (with no limits) that demobilized combatants fail to provide. Ospina said the GOC was considering including limited state responsibility, but that Minister of Interior and Justice Pretelt had not accepted the change yet. The versions also differ slightly in how they define victims. The GOC version defines a victim as anyone who was harmed by the illegal armed group, while the Pardo version defines victims more broadly, as anyone who suffered from crimes -- whether actions or omissions -- related to the armed conflict. This seemingly minor difference is significant, since only State actors can commit crimes of "omission."

-- Length of Incarceration: Both the GOC and Pardo versions require beneficiaries to spend five to ten years in confinement. The GOC version allows a beneficiary to reduce his term by up to 18 months for time spent in a concentration zone during peace talks after fully demobilizing. It also authorizes the GOC to create additional concentration zones where beneficiaries can serve their sentences, as long as the zones meet National Penitentiary Institute (INPEC) standards. The Pardo version limits credit for time spent in a concentration zone to 12 months, provided the beneficiary was demobilized and under the complete control of the State while in the zone.

-- Length of Parole: Both versions require a supervised parole period after incarceration that includes home visits and electronic monitoring. The GOC version sets the parole period at one-fifth of the length of confinement (1-2 years), while the Pardo version calls for a parole period of 8 years.

-- Individual Participation: The GOC version allows individuals who desert from an illegal armed group to benefit from the law. Pardo has said he will accept this provision as long as it does not allow leaders of an illegal armed group already involved in peace negotiations to benefit without being held accountable for their troops' actions.

-- Tribunal Composition: The drafts differ on the number of

magistrates on the Truth, Justice, and Reparations Tribunal, the body responsible for issuing alternative sentence and auxiliary punishments and verifying beneficiaries' compliance. The GOC version calls for a three-judge tribunal, expandable to nine judges, that operates for four years. The Pardo version calls for a nine-judge panel to operate for 12 years.

Other Drafts

17. (C) In the past week, at least six other members of Congress presented alternative versions of the law. Two drafts have sufficient support to influence the debate and possibly the final text:

-- Uribista Senator Armando Benedetti submitted a version similar to an early GOC draft criticized for leniency. Several other Uribe supporters were co-signers and the press speculated that Peace Commissioner Restrepo was a behind-the-scenes advocate.

-- Senator Piedad Cordoba, a victim of a paramilitary kidnapping, drafted a bill focused on guaranteeing victims' rights, including a truth commission. It is the most punitive of the competing drafts. She has publicly declared that she wants to see the paramilitaries spend their lives in jail. Restrepo has predicted that elements of Cordoba's truth mechanism will be included in the final law.

More Modifications Coming

18. (C) The GOC itself is not entirely on board with its text and is still making modifications. Restrepo and Vice President Santos have both expressed reservations about the draft. On February 16, Uribe gave Restrepo permission to suggest changes to Congress and Minister of Interior and Justice Pretelt. Restrepo has said some aspects of the GOC are unrealistically harsh and would jeopardize the peace process. Both Pardo and Velasco have predicted that the law that eventually passes will be a blend of the GOC and Pardo versions with some elements of other drafts. We have emphasized that any draft must not harm the U.S.-Colombian extradition relationship, require a five year minimum sentence for paramilitary leaders, and prevent drug lords from buying into the process (prospects and logistics of legislative process reported in septel).

19. (C) Velasco has warned that the paramilitaries are exerting heavy pressure on members of Congress to support a lenient bill. As Congressional elections near (March 2006), some members of Congress may grow increasingly interested in the votes and financial support the paramilitaries can offer.

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